



November 24, 2020

Thom Fischer Electron Hydro LLC
1800 James Street Suite 201
Bellingham, WA 98225
thom@Tollhouseenergy.com

Subject: Shoreline Exemption Application – Post Emergency Action Review Requirements
Electron Hydro Facility Compliance, Shoreline Substantial Development Permit
Application 858766 and 858765

Mr. Fischer,

As of October 28th, 2020, the emergency actions allowed for in the County's October 14, 2020, Letter of Exemption are complete. No further in-river work is approved.

This letter summarizes the process necessary to resolve the County's August 5th and November 16th Stop Work notices and proceed with the diversion structure project (Project) approved by the Examiner on June 26, 2018 (Substantial Development Permit - "SDP" - application #858766).

The Project now differs greatly from what was approved as a result of the emergency corrective actions that were allowed in order to stabilize the site over the 2020/2021 winter (e.g., construction of the rock sill dam), and a number of unpermitted actions. One of those actions was the use of FieldTurf with crumb rubber. Its unlawful discharge into the river violated the SDP, Federal and State laws. To date, the environmental impact is ongoing and may never fully be cured. Other identified actions include the recent armoring of the river's right bank, below the fish passage structure; and the 2019 construction of a stormwater facility/fish rearing pond.

To proceed with the Project, it will be necessary to apply for a new Substantial Development permit and Environmental review. Consistent with PCC 18.150.050 and 18S.60.C.4, and County Policy 2016-01 (attached), the SDP project description needs to be modified to include the:

1. emergency actions allowed in our Letter of Exemption,
2. turf and crumb rubber removal activities,
3. sedimentation/fish rearing pond built without permit in 2019,
4. items proposed in the second phase of the larger scope of work¹,
5. recent unpermitted activities at the site which to our knowledge include:
placement of cement structures along the left river bank,
armoring of the right bank- downstream of the fish ladder, access road
maintenance activities.

¹The Project was intended to be the initial phase of a larger project whose ultimate goal was the design of a fish exclusion structure that would keep fish out of the flume. One component of the initial phase, construction of an abutment wall, was built as part of the winter stabilization project however, other components were not (e.g., rubber bladder and spillway replacement).

In regard to maintenance activities, as staff have discussed with you, all development within shoreline jurisdiction, even routine maintenance and repair activities, requires County review and approval. We understand that certain activities were completed to remain in compliance with the Department of Ecology Stormwater Pollution Prevention Plan (SWPP). We recognize the importance of compliance with the SWPP but this does not supersede compliance with County regulations.

On the topic of general site maintenance activities; I am aware you have had discussions with Dave Risvold regarding the need for a degree of flexibility in County permits so that you don't need to check with the County every time some routine maintenance action is needed. We agree that some amount of flexibility is warranted, and we encourage you to include in the new application a discussion of all the maintenance activities you feel are needed to properly manage the site.

Finally, we understand that the Department of Fish and Wildlife may ask you to correct certain elements at the site in order to better protect the fishery resource (adjustments to the fish passage structure, as an example). There may be additional requests from other agencies, as well. These actions may fall within the allowances of our previous approvals or, they may require separate approval. As of the date of this letter, no agency has actually requested any of these actions and the review process described in this letter does not include any of those actions.

In summary: to resolve the County Stop Work Orders, please make application for a Shoreline Substantial Development Permit, pursuant to PCC Title 18S, and Environmental Review, pursuant to PCC Title 18D. The applications need to include the five elements listed above in this letter. We would be happy to discuss in more detail the application process with you.

Lastly, we were notified that DFW, but not the Puyallup Tribe, was informed of the fish collection activities that took place on Sunday, October 25, 2020. Coordination with the Tribe is a requirement of the Pierce County Hearing Examiner's June 26, 2018 decision, Condition 10:

The applicant shall coordinate with the Washington Department of Fish and Wildlife and the Puyallup Tribe to ensure the potential for fish stranding is minimized to the degree possible.

The failure to coordinate with the DFW and Puyallup Tribe is contrary to the SDP and is also subject to the enforcement and penalty provisions of PCC 18.140.

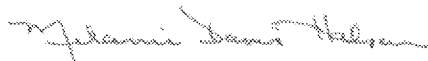
Your recent appeal of the County's October 2, 2020, Amendment to Stop Work Order challenges a provision requiring site access to the Puyallup Tribe for monitoring. The pending appeal could modify provisions of the Order, but the order remains in full effect and continues to bind Electron unless the Hearings Examiner modifies it. In addition, the challenged provision is consistent with Permit Conditions Nos. 10 and 11 and is within the scope of the County's authority under PCC 18.140. Moreover, Permit Conditions 10 and 11 were never challenged, remain in effect, and any collateral challenge now would be untimely. Nonetheless, your appeal will be processed in due course.

We understand that your Counsel has requested a meeting to discuss the Appeal matter, in hopes of resolving it without the need for a Hearing. We are always willing to meet to resolve such issues and look forward to a meeting.

This letter does not alter your obligations and requirements as specified in the prior County Amendments to Stop Work Order. Please note the approvals described in those Amendments do not constitute a new permit or supersede the current SDP.

If you have any questions, contact Dave Risvold at dave.risvold@piercecounitywa.gov, 253-798-7036 (desk) or 253-307-5929 (cell).

Sincerely,



Melanie D. Halsan
Assistant Director, Planning and Public Works

EC: Bill Sterud, Chair, Puyallup Tribe
Doug Richardson, Chair, Pierce County Council
Don Anderson, Pierce County Executive's Office
Jacalen Printz, US Army Corps of Engineers
Carol Serdar, WA Department of Ecology
Chris Czieszla, Principal Marine/Fisheries Biologist, Confluence EC
Gwen Lentz, Program Manager Region 6, WA Department of Fish and Wildlife
Jeff Huber, Encore Environmental, LLC
Dennis Hanberg, Director, Pierce County Planning and Public Works
Todd Campbell, Prosecuting Attorney's Office
Chris Spens, cspens@tollhouseenergy.com